

RECEIVED

DEC 19 2014

City of Issaquah

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF ISSAQUAH

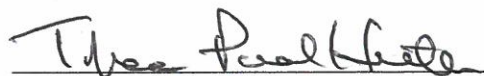
In the Matter of the Appeals of	)	No. HEA-2014-01
	)	No. SW14-00037
	)	
<b>Bass &amp; Bass Partnership</b>	)	<b>East Lake Sammamish Parkway</b>
	)	<b>Widening Project</b>
	)	
Of a Site Work Permit and a SEPA	)	RESPONSE TO APPELLANT NOTICE
<u>Threshold Determination</u>	)	

TO: ALL PARTIES

PLEASE TAKE NOTICE, that the undersigned Hearing Examiner, having the responsibility to decide all appeals before him, has on this day forwarded a decision on this appeal to the City.

Under IMC 18.04.240, the City has the responsibility for mailing the Notice of Decision to the parties.

DATED this 18<sup>th</sup> day of December 2014.



THEODORE PAUL HUNTER

Hearing Examiner

Sound Law Center

RECEIVED  
DEC 19 2014  
City of Issaquah

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF ISSAQUAH

In the Matter of the Appeals of	)	No. HEA-2014-01
	)	No. SW14-00037
	)	
<b>Bass &amp; Bass Partnership</b>	)	<b>East Lake Sammamish Parkway</b>
	)	<b>Widening Project</b>
	)	
Of a Site Work Permit and a SEPA	)	FINDINGS, CONCLUSIONS, AND
<u>Threshold Determination</u>	)	DECISION

**SUMMARY OF DECISION<sup>1</sup>**

Bass & Bass Partnership's appeal of the SEPA Mitigated Determination of Nonsignificance and Site Work Permit (SW14-00037) for the East Lake Sammamish Parkway Widening project is **DENIED**. Substantial evidence supports the conclusion that the City properly considered the environmental impacts of the project—including impacts to the built environment—and did not commit clear error in issuing the Site Work Permit (SWP) and Mitigated Determination of Nonsignificance (MDNS). Additionally, substantial evidence establishes that the East Lake Sammamish Parkway Widening project would be separately funded from other proposed roadway projects in the North Issaquah region, known collectively as the "North Issaquah Roadway Network Improvements" (NIRNI), and would proceed independently of whether the other NIRNI projects are eventually completed. Accordingly, the City did not commit clear error in issuing a separate SEPA determination for the East Lake Sammamish Parkway Widening project.

**SUMMARY OF PROCEEDINGS**

Hearing Date:

The Hearing Examiner held an open record hearing on the appeal on November 21, 2014. Before closing the hearing, the parties agreed that Mr. Williamson could supplement the record to address Mr. Park's motion to dismiss the appeal. The parties also agreed that a decision could be issued by December 22, 2014.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

*Appellant Witness:*

---

<sup>1</sup> The Hearing Examiner decides the Appellant's appeals of the Administrative Site Development Permit (ASDP13-00001), Shoreline Substantial Development Permit (SHO13-00007), and SEPA MDNS for the North Issaquah Roadway Network Improvements in a companion decision.

*Findings, Conclusions, and Decision*

*City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening  
Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*

Christopher Brown, PE  
David Cole, PE  
Douglas Stalder  
Christian Azizeh

*City Witnesses:*

Sheldon Lynne, Public Works Engineering Director  
Kerry Ritland, Surface Water Manager  
Peter Rosen, Senior Environmental Planner and SEPA Responsible Official

Attorney Bill Williamson represented the Appellant  
Attorney Bio Park represented the City.

Exhibits:

The following exhibits were admitted into the record:

*Appellant Exhibits*

- A-1. Shoreline Permit Application (SHO13-00007), received March 29, 2013
- A-2. Land Use Permit Application for Administrative Site Development Permit (ASDP13-00001), dated January 7, 2013
- A-3. Notice of Decision for ASDP13-00001 and SHO13-00007, dated September 23, 2014
- A-4. Elements of Site Development Permit Process, undated
- A-5. Environmental Checklist and Mitigated Determination of Non-Significance, dated August 6, 2014
- A-6. Preliminary Costco Development Agenda Record – AB 6780, dated October 13, 2014
- A-7. Assessment of Site Impacts, Christopher Brown, dated August 5, 2014
- A-8. Assessment of Site impacts, Christopher Brown, dated June 30, 2014
- A-9. North Issaquah LID Roadway Project Color Project Plan Sheets, dated July 24, 2012
- A-10. Gray & Osborne (City) Preliminary ELSP/62<sup>nd</sup> Street Improvements, dated January 2014
- A-11. Concept Engineering Channelization & Driveway Modification Sheet, dated February 13, 2014
- A-12. Addendum to SEPA Determination, dated July 17, 2014
- A-13. North Issaquah Local Improvement District Transportation Analysis, dated October 2012
- A-14. Bass Appeal Statement before City's Hearing Examiner, with attachments, dated August 20, 2014
- A-15. Bass Appeal Statement before the City's Hearing Examiner, with attachments, dated July 25, 2014
- A-16. Bass Appeal Statement before the City's Hearing Examiner, dated July 2, 2014
- A-17. Issaquah Street Standards (Transportation), dated October 15, 2010
- A-18. Excerpts from City Council Regular Meeting Agenda for October 20, 2014
- A-19. Site Photograph, undated
- A-20. Site Photograph, undated

*Findings, Conclusions, and Decision*

*City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening  
Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*

- A-21. Excerpt from Exhibit A-6, detailing approved projects for the North Issaquah Roadway Network, undated
- A-22. Vicinity Map for Local Improvement District 25, dated June 2012
- A-23. Preliminary Plan for East Lake Sammamish Parkway SE improvements, dated January 2014
- A-24. Copy of check from Williamson Law Office to City, dated October 6, 2014
- A-25. Resume for Christopher Brown, P.E., undated
- A-26. Resume for David Cole, P.E., undated
- A-27. Binder of "Filed SEPA MDNS & Underlying Permit Appeals," undated
- A-28. Copy of check from Williamson Law Office to City, dated October 6, 2014
- A-29. Business Banking Statement for Williamson Law Office, dated October 31, 2014

#### *City Exhibits*

- C-1. Utilities Application, dated June 12, 2014
- C-2. East Lake Sammamish Parkway SE Improvements Plans, dated January 22, 2014 (Cover, Sheets 1 to 61)
- C-3. East Lake Sammamish Parkway Improvements SEPA Checklist, dated June 10, 2014; with Vicinity Map, Project Area Map, and Floodplains and Hazardous Sites Map (Figures 1 to 3)
- C-4. Critical Areas Report and Conceptual Mitigation Plan, revised April 2014
- C-5. Endangered Species Act Stormwater Design Checklist, dated March 2014
- C-6. Final Cultural Resources Assessment, dated June 2014
- C-7. Memorandum from Ikuno Masterson, RE: East Lake Sammamish Parkway Traffic Report Summary, dated March 1, 2014
- C-8. East Lake Sammamish Parkway SEPA MDNS, dated June 18, 2014
- C-9. East Lake Sammamish Parkway SEPA MDNS Addendum, dated July 17, 2014
- C-10. Land Use Permit Application for Administrative Site Development Permit (ASDP13-00001), dated January 7, 2013; Shoreline Permit Application (SHO13-00007), received March 29, 2013
- C-11. Notice of Application and Notice of Public Meeting to adjacent property owners for ASDP13-00001 and SHO13-00007, dated April 26, 2013; Affidavit of Mailing, dated April 26, 2013.
- C-12. Legal notice in *The Issaquah Press* for the Public Meeting associated with SHO13-0007 and ASDP13-00001, dated May 1, 2013.
- C-13. Public Meeting Minutes, dated May 21, 2013
- C-14. Plans (30% design drawings; 13 sheets), updated December 31, 2012
- C-15. Cover sheet for SEPA Checklist and supporting technical studies, undated
- C-16. SEPA Environmental Checklist, dated December 2012
- C-17. Geotechnical Report, North Issaquah LID Proposed Bridge, PanGEO, Inc. (Appendix A of SEPA Checklist), dated August 2012
- C-18. Draft Geotechnical Report, North Issaquah Roadway Improvements, PanGEO, Inc. (Appendix B of SEPA Checklist), dated September 14, 2012

#### *Findings, Conclusions, and Decision*

##### *City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*



- C-19. Critical Areas Report and Conceptual Mitigation Plan, (Appendix C of SEPA Checklist), dated October 2012
- C-20. Cultural Resources Memorandum, ESA Paragon, (Appendix D of SEPA Checklist), dated May 30, 2012
- C-21. Transportation Operation Analysis, Transportation Solutions, Inc. (Appendix E of SEPA Checklist), dated October 2012
- C-22. SE 62nd St/4th Ave NW Roundabout Memo, Design Operations Analysis, dated October 2012
- C-23. 12th Ave NW Alternative Improvements Memo, dated September 5, 2012
- C-24. Detailed Level of Service (LOS) Tables, dated October 2012
- C-25. SEPA Determination for North Issaquah Roadway Network Improvements (ASDP13-0001/SHO13-00007), dated August 6, 2014
- C-26. Notice of Decision for ASDP13-0001 and SHO13-00007, dated September 23, 2014
- C-27. City of Issaquah Street Standards, dated October 15, 2010
- C-28. Site Impacts Assessment, Christopher Brown, dated August 5, 2014
- C-29. Declaration of Charlie Bush, dated November 20, 2014
- C-30. Blank SEPA Checklist form, dated May 2014
- C-31. Aerial of East Lake Sammamish Parkway Improvement, undated
- C-32. Aerial of SE 62<sup>nd</sup> Street, undated

Pleadings, Appeals, Briefs, Notices and Orders

- Bass Partnership Combined Comments & Appeal Statement, MDNS issued June 18, 2014 for No. SW14-00037, SHO13-00007, and ASDP13-00001, dated July 3, 2014 (Exhibit A-16)
- Bass Partnership Supplemental Comments & Amended Appeal Statement, MDNS addendum issued July 17, 2014, for No. SW14-00037, SHO13-00007, and ASDP13-00001, dated July 25, 2014 (Exhibit A-15)
- Bass Partnership Appeal Statement of SEPA Threshold Determination (MDNS issued August 6, 2014) for No. SW14-00037, SHO13-00007, and ASDP13-00001, received August 22, 2014, with Attachments A-C
- Supplemental Bass Partnership Appeal Statement, dated October 6, 2014, with Attachments A-C
- Hearing Examiner Pre-Hearing Order, dated October 20, 2014
- Appellant's Motion for Continuance, dated October 23, 2014, with Declaration of Bill H. Williamson, and attachments A-C.
- Email from Peter Rosen to Ted Hunter, City's non-opposition to a continuance, dated October 23, 2014
- Hearing Examiner's Response to Parties' Request for Continuance and Revised Pre-Hearing Order, dated October 28, 2014
- City's Response to SEPA, ASDP and SSDP Appeals, dated November 7, 2014
- Petitioner's Preliminary List of Issues, Witnesses & Exhibits, dated November 14, 2014
- Appellant's Response Brief, dated November 14, 2014

*Findings, Conclusions, and Decision*

*City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening  
Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*

- City's Response to Appellant's Opening Brief, dated November 18, 2014
- City's Oral Motion to Dismiss, presented November 21, 2014
- Petitioner's Response to City's Motion to Dismiss Appeal, dated December 3, 2014
- Respondent City of Issaquah's Motion to Dismiss for Failure to Appeal Underlying Permit – Reply, dated December 5, 2014

The Hearing Examiner makes the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record appeal hearing:

## **FINDINGS**

### Property and Proposed City Projects

1. Bass & Bass Partnership (Appellant) operates Issaquah Mini Storage at 6011 East Lake Sammamish Parkway SE. The Bass property is located northwest of the intersection of East Lake Sammamish Parkway SE, which runs north and south along the eastern property boundary, and SE 62<sup>nd</sup> Street, which runs east and west along the southern property boundary. Issaquah Mini Storage currently has three entrances along East Lake Sammamish Parkway SE and two padlocked, gated entrances along SE 62<sup>nd</sup> Street. *Exhibit A-9; Exhibit C-9.*
2. In 2012, the City of Issaquah (City) Public Works Department (Public Works) proposed the formation of a local improvement district (LID), consistent with RCW 35.43.040, to fund transportation improvements that would benefit properties in the North Issaquah area, especially by eliminating traffic congestion. *Exhibit C-16; Exhibit C-19.* This package of improvements was identified and included in the City's 2013-2018 Transportation Improvement Program (TIP). *Exhibit C-16.*
3. In December 2012, the City prepared a SEPA Checklist for this package of roadway improvements, collectively known as the "North Issaquah Roadway Network Improvements" (NIRNI). The SEPA Checklist identified the following roadway improvements as potential elements of the overall NIRNI project:
  - Constructing a new extension of SE 62<sup>nd</sup> Street from 221<sup>st</sup> Place SE to the southeast portion of Lake Drive. The new roadway would require a two-lane bridge crossing Issaquah Creek and North Fork Issaquah Creek. The roadway would provide an additional point of access to the Pickering Park shopping area and relieve congestion along the SR 900, SE 56<sup>th</sup> Street, and East Lake Sammamish Parkway corridors.
  - Widening SE 62<sup>nd</sup> Street from 221<sup>st</sup> Place to East Lake Sammamish Parkway from two to up to five lanes, including installation of a new roundabout at the intersection of SE 62<sup>nd</sup> Street and 221<sup>st</sup> Place SE.
  - Widening East Lake Sammamish Parkway SE to add a second southbound through lane between Black Nugget Road and Issaquah-Fall City Road.

*Findings, Conclusions, and Decision*

*City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening*

*Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*

- Improving 221<sup>st</sup> Place SE to complete sections of curb, gutter, and sidewalk where none exist.
- Adding a second outbound left-turn lane on 12<sup>th</sup> Ave NW approaching the intersection with SR 900.
- Adding a northbound right-turn lane on SR 900 approaching the intersection with 12<sup>th</sup> Ave NW.

*Exhibit C-16.*

4. With the SEPA Checklist, the City included five appendices: an October 2012 Conceptual Mitigation Plan addressing potential impacts to critical areas; an August 2012 Geotechnical Report for the proposed bridge; a September 2012 Draft Geotechnical Report analyzing the proposed NIRNI projects (apart from the bridge); a May 2012 Cultural Resources Memorandum; and an October 2012 Transportation Operations Analysis (with three of its own appendices) addressing traffic impacts of the proposed NIRNI projects. *Exhibits C-16 through C-24.*
5. The SEPA Checklist explicitly noted that parts of Issaquah Mini Storage are within the proposed construction area for some of the NIRNI projects and that portions of the Appellant's property would need to be acquired to allow for demolition of some structures on the site. *Exhibit C-16, page 27.*

Permit Applications, ASDP13-00001 and SHO13-00007

6. On January 7, 2013, Public Works applied for an Administrative Site Development Permit (ASDP13-00001) for the NIRNI projects. Public Works included the SEPA Checklist with this application. *Exhibit C-10.* On March 12, 2013, Public Works applied for a Shoreline Substantial Development Permit (SHO13-00007) to address the portions of the NIRNI projects potentially affecting Issaquah Creek and North Fork Issaquah Creek. *Exhibit C-11; Exhibit C-12.* The City consolidated these applications, determined they were complete on March 29, 2013, and, on April 26, 2013, sent a "Notice of Application and Notice of Public Meeting" for these applications to adjacent and interested property owners. *Exhibit C-12.* On May 21, 2013, the City held a public meeting on the applications. The meeting minutes note that the purpose of the meeting was to receive public comment on potential shoreline impacts to Issaquah Creek and North Fork Issaquah Creek, as well as wetland areas, from the NIRNI projects. *Exhibit C-13.*
7. The City did not issue a Mitigated Determination of Nonsignificance (MDNS) for these applications until August 6, 2014, and did not issue a Notice of Decision on the projects until September 23, 2014.<sup>2</sup> *Exhibit C-25; Exhibit C-26.*

---

<sup>2</sup> As noted in Footnote 1, the Appellant appealed the NIRNI MDNS and permit decisions on ASDP13-00001 and SHO13-00007. The Hearing Examiner separately addresses these appeals in a companion decision.

8. Sheldon Lynne, Director of Public Works Engineering, testified at the open record hearing that the City received funding, primarily in the form of federal grants, to move forward with the East Lake Sammamish Parkway (ELSP) Widening project independently of the other proposed NIRNI transportation projects. Mr. Lynne stressed that the City had planned to widen ELSP for years and that, although the City previously considered this project in conjunction with the other NIRNI projects, it has always remained viable as a stand-alone project and has never depended on other NIRNI projects moving forward. The availability of funding prompted the City to move forward with the ELSP component of the NIRNI project. *Testimony of Mr. Lynne.*

East Lake Sammamish Parkway Widening Project (SW14-00037)

9. Public Works prepared a SEPA Environmental Checklist for the ELSP Widening project on June 10, 2014, in conjunction with its Site Work Permit application (SW14-00037). The checklist noted that “[t]his is an independent project but is a component of the overall improvements planned in the North Issaquah area” and that the “North Issaquah Roadway Network Improvements [NIRNA] project . . . is under review with the City of Issaquah Development Services Department,” but the ELSP project “is an independent project.” *Exhibit C-3.* The checklist states,

The project consists of widening of East Lake Sammamish Parkway SE—from just north of Issaquah-Fall City Road to just south of SE 56<sup>th</sup> Street—to add a second southbound vehicle lane, a five-foot wide bicycle lane, curb, gutter, and storm drainage and underground utilities . . . Additionally, the project includes the widening of the eastbound approach of SE 62<sup>nd</sup> Street at the intersection with East Lake Sammamish Parkway SE from three to four lanes.

*Exhibit C-3.*

10. The checklist also states that the project “would involve relocation or removal of approximately 80 storage units and/or boat parking stalls” at the Appellant’s business, and discloses other potential environmental impacts resulting from implementation of the ELSP project. The checklist did not disclose any impacts to the Appellant’s driveways to the Bass property. At the open record hearing on this appeal, Senior Environmental Planner and SEPA Responsible Official Peter Rosen testified that he followed standard SEPA checklist instructions, which do not require an analysis of potential impacts to driveways.<sup>3</sup> *Exhibit C-3; Testimony of Mr. Rosen.*
11. Attached to the SEPA Environmental Checklist, Public Works included the following additional studies specifically tailored to the ELSP Widening project: an April 2014 Critical Areas Report and Conceptual Mitigation Plan; a March 2014 Endangered Species

---

<sup>3</sup> Under WAC 197-11-960, applicants are explicitly directed not to address impacts to driveways in a SEPA checklist.



Act and Stormwater Design Checklist; a June 2014 Final Cultural Resources Assessment; and a March 2014 East Lake Sammamish Parkway Traffic Report Summary. *Exhibits C-4 through C-8.*

12. The City acted as lead agency and analyzed the environmental impacts of the ELSP Widening project, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed Public Works' Environmental Checklist and the other information on file and determined that, with two conditions, the ELSP Widening project would not have a significant adverse impact upon the environment.<sup>4</sup> Mr. Rosen issued an MDNS for the project on June 18, 2014. *Exhibit C-8.*
13. The Appellant timely appealed the MDNS on July 3, 2014. In its appeal statement, the Appellant argued that the City failed to meaningfully examine and disclose impacts to the built environment as required by WAC 197-11-444(2), including impacts from the "raised channelized roadway and corridor improvements . . . [placing] the Bass Property in a hole forcing Bass to fill significant portions of [its] property to off-set the adverse effects of the elevated roadway connections,"; failed to analyze the proposal's effects "to Bass' existing commercial access driveways"; failed to address the ELSP Widening project in conjunction with the other pending NIRNI projects; failed to examine alternatives to the project that would allow the Appellant to maintain a full access driveway off SE 62<sup>nd</sup> Street; and failed to provide the Appellant with written notice of Public Works' permit application for SW14-00037. *Exhibit A-16.*
14. The Appellant included a number of exhibits with its July 3, 2014, MDNS appeal. Specifically, the Appellant included a report by Christopher Brown, PE, prepared June 30, 2014, addressing potential site impacts to the Bass property.<sup>5</sup> *Exhibit A-8.* This report notes that five driveways currently serve the Bass property and that, after completion of the ELSP Widening project (and the other NIRNI projects), only three driveways would serve the property. One of the three driveways, the remaining driveway accessing SE 62<sup>nd</sup> Street, would only allow right-turn-in and right-turn-out site ingress and egress. To mitigate for loss of these additional driveways, the Brown report suggests that plans for SE 62<sup>nd</sup> Street be modified to allow for a two-way, left-turn lane extending from the eastside of the proposed roundabout at 62<sup>nd</sup> Street and 221<sup>st</sup> Place SE to the intersection of East Lake Sammamish Parkway. The report also suggests that, because the earning capacity of the Appellant's business would be impacted by the projects, alternative uses of the site should be considered (such as converting the site into a medical/dental building or an assisted-living facility) in the SEPA analysis. *Exhibit A-8.*

---

<sup>4</sup> The two conditions relate to wetland mitigation and critical areas impact, and are not germane to this appeal. *Exhibit C-8.*

<sup>5</sup> Mr. Brown revised this report on August 5, 2014. *Exhibit A-7.*

15. In response to the Appellant's concerns, the City issued a SEPA Addendum on July 17, 2014. The City's Addendum provides that:

There is an existing commercial mini-storage, boat and vehicle storage business located at the northwest corner of ELSP and SE 62<sup>nd</sup> St. The proposed road improvements on SE 62<sup>nd</sup> St would result in closing an existing access driveway to the site. The existing driveway is located adjacent to the intersection; there is little to no offset spacing between the driveway and intersection curb return. The driveway is presently fenced off and not extensively used for commercial access because the close proximity of the driveway to the intersection impacts intersection safety and operations. There is another site driveway on SE 62<sup>nd</sup> St, further to the west and approximately 350 feet from the intersection, which also currently provides access to the site off SE 62<sup>nd</sup> St. This driveway would not be impacted by the proposed road improvements and would continue to provide viable access to the business on site. In addition, there are 2 driveways onto the site off ELSP and these driveways also would continue to provide for site access.

The removal of the eastern driveway on SE 62<sup>nd</sup> St is not considered a significant adverse environmental impact because there are 3 other existing driveway access points onto the site which provide for viable and safe access to the existing commercial business on site.

The proposed road improvements would raise the road grade on SE 62<sup>nd</sup> St and ELSP adjacent to the commercial site. Stormwater drainage from the road would be conveyed to the City storm system, so there would not be additional stormwater impacts on the site. The raised road grade would steepen the driveway access onto the property, but the driveway slope would remain within access standards.

*Exhibit C-9.*

16. On July 25, 2014, the Appellant responded to the City's SEPA Addendum with a supplemental appeal statement. This supplemental appeal statement reiterated the Appellant's concerns about the ELSP Widening project being considered independently of the other NIRNI projects, and the City's failure to more specifically address impacts to the Bass property or consider the alternative roadway design for SE 62<sup>nd</sup> Street proposed in Mr. Brown's report. *Exhibit A-15.*
17. On September 23, 2014, Mr. Rosen notified the Appellant that SW14-00037 had been approved and that, because the "Site Works permit is a construction permit . . . there is no written decision." *Supplemental Bass Partnership Appeal Statement, dated October 6, 2014, with Attachments A-C.*

*Findings, Conclusions, and Decision*

*City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening*

*Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*

18. On October 6, 2014, the Appellant provided a “Supplemental Bass Partnership Appeal Statement.” In this document, the Appellant specifically referenced its previous SEPA MDNS appeal for the ELSP Widening project and reiterated a number of the arguments previously made in the SEPA MDNS appeal. This supplemental document also argued that the City failed to provide for a community meeting to discuss SW14-00037, in violation of IMC 18.04.140, and that the Site Work Permit failed to comply with City Street Standards.<sup>6</sup> *Supplemental Bass Partnership Appeal Statement, dated October 6, 2014, with Attachments A-C.*

ELSP Widening Project Appeal

19. The City and the Appellant agreed to hold the ELSP Widening project open record appeal hearing on November 21, 2014. Prior to the hearing, the City prepared a legal brief addressing the appeal. In the brief, the City argued that the appeal should be dismissed because, although the Appellant timely filed an appeal of the MDNS for the ELSP Widening project, it failed to specifically appeal the later-issued underlying permit, SW14-00037. The City also argued that the SEPA Responsible Official appropriately considered specific impacts to the Appellant’s property, as evidenced especially by the SEPA Addendum; that the City did not err in issuing a separate MDNS for the ELSP Widening project because the project could proceed independently of the other NIRNI projects, and that no mitigation is required (specific to the Appellant’s property) because the Widening project would not cause significant environmental impacts. Finally, in response to the Appellant’s claim of failure to provide notice, the City argued it was not required to provide the Appellant notice of the SW14-00037 permit because the Issaquah Municipal Code exempts Level 0 and Level 1 permits from notice requirements. *City’s Response to SEPA, ASDP and SSDP Appeals.*
20. On November 14, 2014, the Appellant submitted a Response Brief. The Appellant argued that the City must consolidate the Appellant’s MDNS appeal with its appeal of the underlying Site Work Permit and that the record reflects that the Appellant appealed SW14-00037 on October 6, 2014. The Appellant also argued that the City issued the ELSP Widening project MDNS without considering impacts to the Bass property, especially impacts to the commercial access driveways; and that the ELSP Widening project and NIRNI projects should have been analyzed together for SEPA purposes. *Appellant’s Response Brief.* On November 18, 2014, the City responded to the Appellant’s brief, focusing on the City’s view that the Appellant failed to appeal the underlying Site Work Permit (SW14-00037). *City’s Response to Appellant’s Opening Brief.*

---

<sup>6</sup> This submittal also references the Appellant’s separate appeals of the NIRNI MDNS and decisions on ASDP13-00001 and SHO13-0007.

21. At the open record appeal hearing on November 21, 2014, Attorney Bill Williamson representing the Appellant, made an opening statement reiterating the views expressed in the MDNS appeal, namely that the City failed to consider impacts to the Bass property, and that the City violated SEPA in issuing an MDNS for the ELSP project separately from the rest of the NIRNI projects.<sup>7</sup> *Argument of Mr. Williamson.*
22. Christopher Brown, P.E., testified on behalf of the Appellant as a traffic engineering expert. He explained that, in his view, the important access point for the Bass property should be off SE 62<sup>nd</sup> Street., rather than ELSP, because ELSP is a bigger, busier street. Mr. Brown reiterated (as stated in his report) that the City could provide a two-way left-turn lane off of SE 62<sup>nd</sup> Street at little cost, and this would be a valuable mitigation measure for the Bass property. On cross-examination, Mr. Brown acknowledged that he did not know how many times a day the driveways off of SE 62<sup>nd</sup> Street are currently used because they are gated and padlocked, but he assumed that they are seldom used. He stressed, however, that full access to the site off SE 62<sup>nd</sup> Street could be significant if the Bass property changes its current land use. *Testimony of Mr. Brown.*
23. David Cole, P.E., testified on behalf of the Appellant as a general engineering expert witness. Mr. Cole noted that he analyzed the cost of adding the two-way left-turn lane (proposed by Mr. Brown) and calculated that it would cost the City approximately \$15,000 for installation. He discussed the fact that, as part of the ELSP Widening project, a slight increase in the grade of the project driveways off ELSP would occur (between a foot and a foot and a half) and that the City would acquire a slope easement to taper the new grade. He testified that, in his view, this would steepen the slopes of the driveways, but not significantly. *Testimony of Mr. Cole.*
24. Christian Azizeh testified about potential economic impacts to the property. He testified that, with the widening of ELSP, some parking stalls would be lost and some storage units may need to be relocated, which could impact stormwater and utilities on the property. Attorney Bio Park, representing the City, objected to this testimony on the grounds that economic impacts to private property need not be considered during environmental review under SEPA. *Testimony of Mr. Azizeh; Argument of Mr. Park.*
25. Douglas Stalder, a commercial property developer familiar with the property, testified that, in his view, the increased grade change on ELSP would have substantial impacts on the driveways of the Bass property and that left-turn access to SE 62<sup>nd</sup> Street could be critical to success of a future business if the land use on the Bass property changed. *Testimony of Mr. Stalder.*

---

<sup>7</sup> At the appeal hearing, the Appellant abandoned the appeal issues specifically related to the Site Work Permit. These issues concerned whether the City erred in failing to provide a community meeting on the Site Work Permit and whether the Site Work Permit approval was consistent with the City's Street Standards.



26. Mr. Park presented an opening statement on behalf of the City. He argued that, under SEPA, driveways are not considered part of the “built environment,” and impacts to driveways need not be considered. In addition, Mr. Park moved to dismiss the appeal on the grounds that the Appellant failed to properly appeal the underlying permit for SW13-00037. Mr. Park stressed that the Appellant only paid for one appeal (the MDNS appeal) and had not submitted fees for the SW13-00037 appeal. In response, Mr. Williamson acknowledged that the Appellant had only paid a single appeal fee, but argued that the MDNS appeal must be consolidated with the MDNS appeal and, accordingly, only one fee was required. The Hearing Examiner stated at the hearing that he would decide the City’s motion as part of this decision on the appeal. *Argument of Mr. Park; Argument of Mr. Williamson.*
27. At the open record hearing, Mr. Lynne testified that federal grants could not be used for the ELSP project unless it was treated as a stand-alone project, that the City has planned on widening ELSP prior to conceptualization of the other NIRNI projects, and that the projects are not interdependent. He testified that, although the projects are distinct and can be built separately, it is important to think holistically in long-term transportation planning, and the City has done so here. He also noted that, although the ELSP Widening project has received funding, the other NIRNI projects have not. *Testimony of Mr. Lynne.*
28. At the open record hearing, Mr. Rosen testified about issuing the MDNS and the MDNS Addendum. He testified that the City did not receive a separate appeal document on the Site Work Permit and did not receive a separate appeal fee. He acknowledged, however, that the City does not have an appeal form for decisions that are issued without the requirement of written notice, like site work permits. *Testimony of Mr. Rosen.*
29. At the open record hearing, Kerry Ritland, City Surface Water Manager, testified that no surface water impacts would occur on the Bass property as a result of the ELSP Widening project because existing stormwater systems handle water discharge off ELSP and would continue to do so without impacting the Bass property. *Testimony of Mr. Ritland.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is authorized to hear an appeal of a SEPA threshold determination and an underlying project permit in a consolidated open record appeal hearing. *IMC 18.03.140; IMC 18.04.250-1 (footnote 1); IMC 18.04.256.* IMC 1.32.020.E. provides that the Hearing Examiner shall affirm the appealed decision unless, from a review of the record, it is determined the decisions being appealed are clearly erroneous. Moreover, IMC 18.04.250.C dictates that the SEPA determination of the City’s SEPA responsible official shall carry substantial weight in any SEPA appeal.

*Findings, Conclusions, and Decision*

*City of Issaquah Hearing Examiner*

*Bass & Bass Partnership Appeal of East Lake Sammamish Parkway Widening*

*Site Work Permit and SEPA MDNS, No. HEA-2014-01; SW14-00037*

### Criteria for Review

The State Environmental Policy Act (Chapter 43.21C RCW or “SEPA”) specifies the environmental review procedures the City must follow for proposals that may have an impact on the environment. The primary purpose of the act is to “insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.” Every proposal that may impact the environment (unless it is explicitly exempt from the act) must undergo some level of environmental review. *RCW 43.21C.030(b)*.

The SEPA threshold determination is a determination as to whether a proposal is “likely to have a probable<sup>8</sup> significant<sup>9</sup> adverse environmental impact.” *WAC 197-11-330*. If the responsible official determines that a proposal will not have a probable, significant adverse environmental impact, then a Determination of Nonsignificance (DNS) is issued. If the responsible official determines that a proposal *will* have a probable, significant adverse environmental impact, then a Determination of Significance (DS) is issued and an Environmental Impact Statement (EIS) must be prepared. A Mitigated Determination of Nonsignificance may be issued to mitigate identified probable significant adverse environmental impacts so that an EIS need not be prepared. *WAC 197-11-350*.

The lead agency must make its threshold determination “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” If such information is lacking, the lead agency may require additional information from the applicant, conduct its own study, consult with other agencies, or commit to future environmental review when the project becomes more definite. *WAC 197-11-335*.

In deciding whether to require an EIS, the lead agency must consider mitigation measures that the agency or applicant will implement as part of the proposal, including any mitigation measures required by development regulations, comprehensive plans, or other existing environmental rules or laws. *WAC 197-11-330(1)(c); WAC 197-11-350*.

The Hearing Examiner may consider environmental information presented after issuance of the threshold determination in deciding the appeal. The purposes of SEPA are accomplished if the environmental impacts of the proposed development are mitigated below the threshold of

---

<sup>8</sup> *Probable*, as used in SEPA, means likely or reasonably likely to occur. Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. *WAC 197-11-782*.

<sup>9</sup> *Significant*, as used in SEPA, means a reasonable likelihood of more than a moderate adverse impact on environmental policy. Significance involves context and intensity and does not lend itself to a formula or a quantifiable test. *WAC 197-11-794*. Several marginal impacts when considered together may result in a significant adverse impact. *WAC 197-11-330(3)(c)*.

significance, even if the mitigation is not identified in the SEPA document. *Moss v. City of Bellingham*, 109 Wn. App. 6 (2001).

For the MDNS to survive scrutiny by the Hearing Examiner, the record must demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA and that the decision to issue an MDNS was based on information sufficient to evaluate the proposal's environmental impact. *Sportsmen v. Chelan County*, 141 Wn.2d 169, 176 (2000).

“Clear error” is the standard of review applicable to substantive decisions under SEPA. *Cougar Mt. Assocs. v. King County*, 111 Wn.2d 742, 747 (1988). The determination by the governmental agency is “clearly erroneous” only if the Hearing Examiner is left with “the definite and firm conviction that a mistake has been committed.” *Id.* (quoting *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69 (1978)). In deciding this appeal, the Hearing Examiner must accord the City’s SEPA determination “substantial weight.” *RCW 43.21C.090*; *IMC 18.04.250.C*. The Hearing Examiner may not substitute his judgment for that of the decision-making body, but must examine the entire record and all the evidence in light of the public policy contained in the legislation authorizing the decision. *Rural Residents v. Kitsap County*, 141 Wn.2d 185, 196-197 (1999).

#### Conclusions Based on Findings

- 1. The Appellant substantially complied with the requirements for appealing the underlying permit (SW13-00037) and, accordingly, the City’s motion to dismiss the SEPA appeal because the Appellant failed to appeal the underlying permit is denied.** The parties agree that the Appellant timely appealed the SEPA MDNS on July 3, 2014. In addition, the City acknowledges that the Appellant’s October 6, 2014, submittal, the “Supplemental Bass Partnership Appeal Statement,” references SW13-00037. The City argues, however, that reference to the underlying permit is insufficient and that, to properly appeal the Site Work Permit, the Appellant needed to submit a separate appeal document with a separate appeal fee.

IMC 18.04.250-1 (footnote 1) requires that SEPA appeals be consolidated with an appeal of the underlying permit, except in four circumstances inapplicable to the present matter. The Hearing Examiner is the responsible authority for both decisions, and both decisions must be made after a single, consolidated open record hearing. IMC 18.04.256 reiterates this, stating “[t]he City shall consolidate an appeal of a SEPA determination with an open record hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before the City Hearing Examiner.”

Under IMC 18.04.180.B.2, the City was not required to issue a Notice of Application for the Site Work Permit because such notice is not required for a Level 0 permit. Mr. Rosen knew of the Appellant’s interest in the project, however, and notified Attorney Williamson of the permit approval. Shortly thereafter, the Appellant submitted its

October 6, 2014, supplemental appeal statement. In this submittal, the Appellant requested “that its appeal of these project permits be consolidated with earlier record SEPA appeals filed<sup>10</sup> with the City challenging SEPA threshold determinations as provided by IMC 18.04.250 that failed to mitigate impacts to the built environment as required under RCW 43.21C.030 incorporated by reference herein.” *Supplemental Bass Partnership Appeal Statement*.

Although the Appellant did not pay an additional appeal fee, no evidence was presented to show that such a fee is required. Nothing in IMC 18.04.250-1 or IMC 18.04.256 references the need to pay multiple appeal hearing fees associated with an appeal hearing that, by law, must be consolidated. Additionally, Mr. Rosen testified that the City does not have a specific appeal form for decisions not made in writing, such as construction permits. The Appellant asked the City to consolidate its SEPA appeal with the appeal of the underlying permit. In both its July 3, 2014, and July 25, 2014, appeal submittals, the Appellant specifically referenced the as-yet-to-be-approved Site Work Permit for the ELSP Widening project. Therefore, the City was aware of the Appellant’s interest in appealing SW13-00037 since it first issued the MDNS for the project. After the City notified the Appellant of the approval of SW13-00037, the Appellant timely submitted a document requesting a consolidated appeal of SW13-00037 with the MDNS appeal hearing for the ELSP Widening project. Under these specific circumstances, the Appellant substantially complied with the City’s requirements for appealing the underlying permit. *Findings 1, 13 – 18, 20 – 21, 26, 28, 30.*

The Washington Supreme Court has “acknowledged a strong public policy supporting administrative deadlines” in land use appeals and has explained that “[l]eaving land use decisions open to reconsideration long after the decisions are finalized places property owners in a precarious position and undermines the Legislature’s intent to provide expedited appeal procedures in a consistent, predictable and timely manner.” *Durland et al v. San Juan County et al.*, No. 89293-8/89745-0 (Wash. S. Ct., Dec. 11, 2014) (quoting *Chelan County v. Nykreim*, 146 Wn.2d 904, 933 (2002)). Accordingly, the court has consistently ruled that strict compliance with procedural deadlines in land use appeals is necessary. *See, e.g., Nykreim*, 146 Wn.2d at 926; *Brotherton v. Jefferson County*, 160 Wn. App. 699, 703-05 (2011). The court has acknowledged, however, that substantial (rather than strict) compliance with requirements related to the form and content of land use appeals are satisfactory for an appeal to move forward. *Knight v. City of Yelm*, 173 Wn.2d 325, 336 (2011). Moreover, courts normally resort to dismissal only “when a party shows it is substantially prejudiced by another party’s actions.” *Conom v. Snohomish County*, 155 Wn.2d 154, 157 (2005).

Here, it is not clear from the record if a separate appeal fee or a stand-alone appeal document was required for the Site Work Permit to be consolidated with the Appellant’s

---

<sup>10</sup> In a footnote at this point in the sentence, the Appellant specifically referenced its July 25, 2014 submittal challenging the MDNS Addendum.



SEPA MDNS appeal. The concerns of the City appear to be related to the form and content of the appeal, rather than the type of requirement necessitating strict compliance such as a filing deadline. The City did not argue that it was harmed in any way by the appeal moving forward. The City's motion to dismiss the appeal should be denied. *Findings 13, 17-19, 26, and 28.*

2. **Substantial evidence supports a conclusion that the City considered the environmental impacts of the project, including impacts to the built environment. The City did not commit clear error in issuing the MDNS.** The Appellant argues that the City failed to consider impacts to its property in issuing the MDNS, specifically impacts related to the loss of some driveway access off of SE 62<sup>nd</sup> Street and ELSP, impacts from the steepening of the remaining driveways, and potential impacts from stormwater.<sup>11</sup> The City contends that it did consider these impacts, but that such impacts are not likely to have a probable significant adverse environmental impact on the property. Substantial evidence supports the City's position.

The Appellant argues that the City failed to consider impacts to the built environment, its driveways, under WAC 197-11-444. Even assuming without deciding that driveways should be considered part of the built environment under SEPA,<sup>12</sup> this argument fails. The City's SEPA Addendum specifically addressed driveway impacts at the proposed site and substantial evidence in the record supports the City's conclusion that potential impacts to the Appellant's driveways are unlikely to have a probable significant adverse environmental impact.

SEPA threshold determinations are intended to address significant environmental impacts that are likely or reasonably likely to occur. *WAC 197-11-330*. *WAC 197-11-782* defines *probable impacts* under SEPA as those impacts "likely or reasonably likely to occur," as opposed to impacts that "merely have a possibility of occurring, but are remote or speculative." Here, nothing in the record establishes that the ELSP Widening project would substantially impact the Appellant's driveways: the Appellant presented no concrete evidence establishing that the increased slope of the driveways would negatively impact its business, and testimony from multiple witnesses established that the gated, padlocked access driveways off of SE 62<sup>nd</sup> Street are rarely used. The City's

---

<sup>11</sup> The Appellant, through witness testimony at the open record hearing, also argued that the MDNS failed to account for the potential loss of some storage units and parking stalls. The ELSP Widening project MDNS, however, specifically references the need to relocate or remove at least 80 storage units and/or boat storage stalls and that "[c]ompensation for the displacement of the storage units/stalls will comply with federal requirements of the Uniform Relocation Act Amendments (1987) as well as state law (RCW 8.26) and regulations (WAC 468-100)." *Exhibit C-3, pages 16 and 17*. Accordingly, this is an impact to the built environment explicitly considered by the MDNS.

<sup>12</sup> As testified to by Mr. Rosen, the standard SEPA checklist specifically instructs applicants not to address driveway impacts.

determination that loss of two of the five access driveways for the site would not have a significant impact on the Bass property is supported by substantial evidence in the record.

The Appellant presented exhibits and testimony supporting its view that the property would be better served by an alternative roadway design for SE 62<sup>nd</sup> Street allowing full driveway access to the remaining access point off of SE 62<sup>nd</sup> Street (rather than only right-turn-in/right-turn-out access). Mr. Brown's testimony and report, in particular, persuasively argued the merits of such an alternative approach. The Hearing Examiner, however, is not tasked with weighing or assessing the validity of alternative project plans and may not substitute his or her own judgment for that of the SEPA Responsible Official. *Rural Residents*, 141 Wn.2d at 196-97. Instead, the Hearing Examiner must determine whether the SEPA Responsible Official committed clear error in issuing the SEPA determination. *Cougar Mt. Assocs.*, 111 Wn.2d at 747.

This is a difficult standard to meet. For instance, in *Sisley v. San Juan County*, 89 Wn.2d 78 (1977), the Washington Supreme Court concluded that an agency's SEPA determination was clearly erroneous only after noting that the information the agency relied on included unsupported "assertions, numerous unanswered questions and a paucity of information." Similarly, in *Kettle Range Conservation Group v. Washington Dept. of Natural Resources*, 120 Wn. App. 434, 455 (2003), the court held that an agency's SEPA MDNS required reversal because the information relied on involved "acknowledged factual errors and miscalculations."

Here, evidence in the record establishes that the loss of affected driveways—as presently used—would have little impact on the Bass property. Further, although a number of witnesses testified that an alternative roadway plan for SE 62<sup>nd</sup> Street would benefit the Bass property, this testimony stressed the potential importance of this access in case the property was later used for some other purpose. No evidence in the record establishes that any use other than the present use will be made of the Bass property. No proposal for alternate use was discussed, or how the proposed project would have a significant adverse impact on the alternate use. SEPA does not require analysis of remote or speculative events *WAC 197-11-782*.

Finally, no evidence in the record contradicts City Surface Water Manager Kerry Ritland's testimony that the ELSP Widening project would not create stormwater impacts on the Bass property because existing stormwater systems handle water discharge off ELSP and would continue to do so without impacting the Bass property.  
*Findings 1 – 29.*


3. **Substantial evidence in the record supports a conclusion that the ELSP Widening project is an independent project from the other NIRNI projects; the City did not commit clear error in issuing a separate SEPA threshold determination for it.** SEPA regulations require that 'closely related' projects must be addressed in the same

environmental document, as argued by the Appellant. WAC 197-11-060(3)(b) provides that projects are ‘closely related’ only if they “[c]annot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously” or “are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.” That is not the case here. Here, substantial evidence in the record establishes that the ELSP Widening project is an independent project from the other NIRNI projects for several reasons: the ELSP Widening project would be separately funded from the other proposed NIRNI projects; the ELSP Widening project would move forward regardless of whether the other as-yet-unfunded NIRNI projects move forward; the City planned on widening ELSP prior to conceiving of it as part of a larger, improved roadway network in North Issaquah; and the proposed project would have identifiable benefits on traffic in the area regardless of whether the other proposed projects are built. The City’s determination to issue a separate threshold determination is supported by substantial evidence. *Findings 2 – 13, 19, 26 – 28.*

### DECISION

Based upon the preceding Findings and Conclusions, the City’s motion to dismiss the appeal is **DENIED**. In addition, Bass & Bass Partnership’s appeal of the SEPA Mitigated Determination of Nonsignificance and Site Work Permit (SW14-00037) for the East Lake Sammamish Parkway Widening project is **DENIED**. Substantial evidence establishes that the City considered the environmental impacts of the project—including impacts to the built environment—and did not commit clear error in issuing the SWP and MDNS for the project. Substantial evidence also supports a conclusion that the East Lake Sammamish Parkway Widening project is an independent project, and that the City did not commit clear error in issuing a separate SEPA threshold determination for it.

DATED this 18<sup>th</sup> day of December 2014.

  
THEODORE PAUL HUNTER  
Hearing Examiner  
Sound Law Center